



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,116	12/05/2000	Robert Manuel Carmichael	10464.6803	8544

7590 07/15/2002

Daniel S. Polley, Esq.
Malin, Haley & DiMaggio, P.A.
1936 South Andrews Avenue
Fort Lauderdale, FL 33316

EXAMINER

VASUDEVA, AJAY

ART UNIT

PAPER NUMBER

3617

DATE MAILED: 07/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/730,116

Applicant(s)

Carmichael

Examiner

Ajay Vasudeva

Art Unit

3617



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit:

DETAILED ACTION

Priority

1. On 6/21/2001, the instant application (applicant Carmichael, filing date: 12/05/2000) received a paper whereby the applicant amended the specification indicating a priority to the application Serial No. 09/628,836 (applicant Angelini), now abandoned, as its continuation. However, examiner has found no evidence or basis to approve such request for priority.

As a relevant matter, it is noted here that in a different pending application # 09/916414 (applicants Angelini and Carmichael), filed as continuation, a priority has also been claimed to the application Serial No. 09/628,836 (applicant Angelini), now abandoned. Applicants have stated that the continuation application # 09/916414 was filed with an intent to correct the inventorship. Record indicates that such request for priority has been approved by the Office.

The examiner notes that amending the inventorship data by filing a continuation, as in the case of continuation application # 09/916414, changes the inventorship data of only the continuation application. However, such amendment does not change the inventorship of the parent application.

Art Unit:

It is noted that the instant application (applicant Carmichael) does not have any common inventors with the prior application No. 09/628,836 (applicant is Angelini) to qualify as a proper continuation. See MPEP 601.01.

Therefore, applicant's filing of the application as a continuation of the Serial No. 09/628,836 is considered to be in error, and consequently, a claim for an earlier priority date is invalid.

The applicant is required to withdraw the statement made in the paper filed 6/21/2001, that claims a priority to the application Serial No. 09/628,836.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

Art Unit:

3. Claims 1-21 are rejected under 35 U.S.C. 102(a) as being anticipated by publication dated 8/22/2000 at the Halcyon Web-site URL http://www.halcyon.net/mc/06a_mc.shtml.

The Halcyon Web-site publication, submitted with the Information Disclosure Statement (IDS) in the application No. 09/628,836, shows a buoyancy compensator having a releasable ballast system, generally as claimed. The buoyancy compensator comprises a pouch containing ballast, a handle attached to the pouch, a receiving pocket, and a buckle connecting a first strap of the pocket to a second strap of the pouch, and a hip contoured frame plate attached to the pocket and the pouch.

A proof of the fact that the applicant was an owner of the Halcyon company on or before 8/22/2000 (the date of the reference) will overcome such rejection.

4. Claims 1-8, and 12-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Carmichael.

Carmichael describes a buoyancy control unit (figure 2), generally as claimed, having a ballast receiving pocket [70], a ballast within a pouch [94], and a side release buckle [100] having a first section and a second section. The first section [101] is attached to a first strap [85] that is coupled to the receiving pocket, and the second section [102] is attached to a second strap [96] that is coupled to the pouch. The buckle member also constitutes a handle for pulling out the pouch.

Art Unit:

5. Claims 1-8, and 12-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson.

Anderson describes a buoyancy control unit, generally as claimed, having a ballast receiving pocket [30], a ballast within-a-pouch [34], and a side release buckle [84] having a first section and a second section. The first section [86] is attached to a first strap that is coupled to the receiving pocket, and the second section [84] is attached to a second strap [82] that is coupled to the pouch. The buckle member also constitutes a handle for pulling out the pouch.

6. Claims 1-21 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter.

Applicants' amendment dated 21 June 2001 claims the application to be a continuation-in-part of the application Serial No. 09/628,836, now abandoned.

However, it is noted that the application No. 09/628,836, which discloses the exact invention as being claimed in the present application, has a different inventive entity, and additionally, has no common inventors with the present application. (Also see paragraph # 1 of this Office Action).

Therefore, applicant's claim of the present application as being a continuation-in-part of the application Serial No. 09/628,836 is considered to be in error, and thereby invalid.

Further, Claims 1-21 are rejected in view of the invention having been made by a different inventive entity.

Art Unit:

Response to Arguments

7. Applicant's arguments filed 5/3/02 have been fully considered but they are not persuasive.

8. **102(a) Rejection based on Halcyon Web-site publication**: Applicant argues that the Halcyon company is one of the companies owned by the applicant, and has submitted a document dated 4/12/2002 that indicates the same.

However, the examiner notes that there is no record in the file to indicate that the applicant owned the Halcyon company on or before the publication date of the reference used for the rejection.

A proof that applicant was an owner on or before 8/22/2000 (the date of the reference) will overcome such rejection.

9. **102(b) Rejection based on Carmichael**: Applicant argues that item 100 of Carmichael is not a side release buckle.

Applicant may note that the examiner interprets the term "buckle" to mean "any fastening for two loose ends that is attached to one end and capable of restraining the other loose end". In this case, item 100 constitutes such a fastening device that is attached to another loose end 85, and therefore qualifies as a buckle.

Art Unit:

10. **102(b) Rejection based on Anderson:** Applicant argues that Anderson shows a hook and loop fastening system which is not same as the side release buckle. Further, the applicant argues that applicant's invention teaches away from a use of hook and loop fastener.

As noted above, the examiner interprets the term "buckle" to mean "any fastening for two loose ends that is attached to one end and capable of restraining the other loose end" The loop element of the hook-and-loop fastener is capable of restraining the hook element to qualify as such a fastening device, and therefore can broadly be classified as a buckle. The fact that the hook-and-loop fastener requires a sideways motion for unfastening would make it a side release buckle.

Further, there is no evidence in the language of the claims that suggests exclusion of a hook-and-loop fastener as the fastening device. Applicant may note that it is not what is being disclosed in the specification, but in fact what is being claimed that determines the allowability of the claimed matter.

11. Rejection under 35 U.S.C. 102(f): Applicant argues that the applicant (Carmichael) is a co-inventor of another pending application # 09/916414 (inventors Carmichael and Angelini), which is a straight continuation of the parent application # 09/628836. Therefore, according to the applicant, the applicant is also co-inventor of the parent application # 09/628836.

Art Unit:

Firstly, it may be noted that the filing of a continuation application # 09/916414 with an intent to amend the inventorship in fact changes the inventorship data of only the continuation application, and does not affect the inventorship of the parent application Serial No. 09/628,836.

Secondly, regarding the instant application, the examiner has found no evidence or basis to approve inventor's request for priority to the application # 09/628836.

Therefore, the rejection based on 102(f) stands. On a related note, the examiner points out that inventor "Angelini" is a considered a different inventive entity than inventors "Carmichael and Angelini".

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Seligman, Stinton, and Wessels discloses a buoyancy compensator system, and each anticipates at least claim 14.


13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

Art Unit:

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (703) 306-5992.


S. JOSEPH MORANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600



AV

July 11, 2002

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.